

that custody or require that petitioner be brought before the state court. A deserter, apprehended by any civil officer having authority to apprehend offenders under the laws of the United States or of any state, district, territory, or possession of the United States, is in custody by authority of the United States. If a writ of habeas corpus is issued by a state court, the SJA or legal adviser will seek guidance from Litigation Division.

(e) *Foreign court orders.* A foreign court should not inquire into the legality of restraint of a person held by U.S. military authority. If a foreign court issues any process in the nature of a writ of habeas corpus, the SJA or legal adviser will immediately report the matter to the appropriate U.S. forces commander and to Litigation Division.

#### §516.21 Litigation against government contractors.

(a) *General.* A contract might require that the government reimburse a contractor (or subcontractor) for adverse judgments or litigation expenses. Unless a contractor or subcontractor facing a lawsuit requests representation by DOJ, the Army presumes the contractor will obtain private counsel to defend the case. If the contract so allows, however, the contractor may request and HQDA may recommend that DOJ represent the contractor if it is in the best interests of the United States.

(b) *Actions by SJA or legal adviser.* If a contractor or subcontractor faces litigation and the underlying contract with the government requires reimbursement for adverse judgments or costs of the litigation, the SJA or legal adviser, through the contracting officer, should determine if the contractor desires representation by DOJ. If so, the contractor or authorized agent will sign a request for representation. (See figure D-3, appendix G, of this part.) The SJA or legal adviser will determine whether, in his opinion, representation by DOJ should be granted. He will prepare a memorandum to support his recommendation, especially concerning any issue regarding the government's obligation to reimburse the contractor under the contract. The SJA or legal adviser will forward his

memorandum, along with the contractor's request, to Litigation Division.

(c) *Actions by Litigation Division.* The Chief, Litigation Division, will evaluate the submission and decide if it is in the Army's best interest that the request be granted. He will prepare a memorandum supporting his decision and send the packet to DOJ. The Chief's decision constitutes the final DA position on the matter. If DOJ grants the contractor's request, the Chief, Litigation Division, will ensure that the contractor is notified through the SJA or legal adviser and the contracting officer.

(d) *Private Counsel.* A contractor represented by DOJ may ask that private counsel assist the DOJ attorney in the litigation. The DOJ attorney will remain in control of the litigation, and the fees for private counsel will not be reimbursable except under unusual circumstances. The contractor must seek both DOJ and DA approval to employ private counsel when DOJ representation has been granted. Even if DOJ and DA grant authority to employ private counsel, the contracting officer will determine whether a contractor will be reimbursed under the contract for private counsel.

(e) *Settlement.* The contractor, unless the contract specifies otherwise, will ultimately decide whether to compromise a suit. Reimbursement under the contract is determined by the contracting officer, with the advice of his attorney.

#### §516.22 Miscellaneous reporting requirements.

SJAs or legal advisers will comply with the directives cited below concerning actual or prospective litigation involving the following types of cases:

##### (a) *Taxation.*

(1) Contractor transactions. (FAR and DFARS, 48 CFR parts 29 and 229).

(2) Army and Air Force Exchange Service (AAFES) activities. (AR 60-20).

(3) Purchase or sale of alcoholic beverages. (AR 215-2).

(4) Nonappropriated fund and related activities. (AR 215-1).

(b) *Tort and contract claims, insurance and litigation involving nonappropriated fund activities.* (AR 215-1).